FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1920.

No. 525

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
Petitioner, Respondent to Cross-Petition,

vs.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,
Respondent, Cross-Petitioner.

CROSS-PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit.

EARL W. EVANS,
Attorney for Petitioner, Respondent to Cross-Petition.

FRANK A. TAYLOR,
RAY H. JOHNSON,
Of Counsel.

INDEX.

	Page
Grounds Upon Which Jurisdiction Is Invoked	2
Question Presented for Review	3
The Statutes Involved	3
Statement of the Case	3
Basis of District Court Jurisdiction	3
Argument	4
Question 1	4
Conclusion	5

Cases Cited.

Best v. Yerkes, 247 Iowa 800, 77 N. W. 2d 23	4
Chicago & Northwestern Ry. Co. v. Dunn (1882), 59 Iowa 619, 13 N. W. 722	4
City of Des Moines v. Barnes (1947), 238 Iowa 1192, 30 N. W. 2d 513	4
City of Des Moines v. Des Moines Water Company (1920), 188 Iowa 24, 175 N. W. 821	4
City of Ottumwa v. Parks (1876), 43 Iowa 119	5
Constantine v. Scheidel, 249 Iowa 953, 90 N. W. 2d 10	4
Hathaway v. Sioux City (1953), 244 Iowa 508, 57 N. W. 2d 228	4
Hawkeye-Security Ins. Co. v. Lowe Construction Co., ... Iowa ..., 99 N. W. 2d 421, 425	4
Hawley v. Davenport, R. I. & N. W. Ry. Co. (1951), 242 Iowa 17, 45 N. W. 2d 513	4
Horrabin v. City of Des Moines (1924), 198 Iowa 549, 199 N. W. 988, 38 A. L. R. 554	4

Pfarr v. Standard Oil Co. (1914), 165 Iowa 657, 146 N. W. 851, L. R. A. 1915C, 336 4

Rozmajzl v. Northland Greyhound Lines (1951), 242 Iowa 1135, 49 N. W. 2d 501 4

Sweet v. Atkinson (1921), 191 Iowa 645, 182 N. W. 793 4

Van Tiger v. Hendricks, 249 Iowa 25, 85 N. W. 2d 543, 545 4

Weidert v. Monahan Post Legionnaire Club, Inc. (1952), 243 Iowa 643, 51 N. W. 2d 400 4

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1960.

No. .....

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
Petitioner, Respondent to Cross-Petition,

vs.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,
Respondent, Cross-Petitioner.

CROSS-PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

Chicago and North Western Railway Company (herein referred to as "Northwestern") respectfully prays that this Court grant certiorari to review a judgment of the United States Court of Appeals for the Eighth Circuit, which affirmed a judgment of the United States District Court for the Northern District of Iowa in favor of cross-petitioner, Northwestern, and against petitioner and respondent to cross-petition, Chicago, Rock Island and

Pacific Railroad Company (herein referred to as "Rock Island"), in the amount of thirty-five thousand dollars, with interest and costs, in a suit for indemnity, or in the alternative for contribution, growing out of a personal injury sustained by one of Northwestern's employees, said grant of certiorari to be made only in the event the Court should grant the original petition for writ of certiorari by the Rock Island previously filed herein.

The opinion of the Court of Appeals is reported at 280 F. 2d 110, and is printed in Appendix "A" of petitioner, Rock Island's, petition for writ of certiorari. The judgment of that Court is printed as Appendix A-1 of Rock Island's petition, and the findings of fact, conclusions of law, opinion and judgment of the District Court are reported at 179 F. Supp. 33-63, and are printed in Appendix "B" of Chicago, Rock Island and Pacific Railroad Company's petition for writ of certiorari.

GROUNDS UPON WHICH JURISDICTION IS INVOKED.

(i) The judgment to be reviewed was entered in the United States Court of Appeals for the Eighth Circuit on August 10, 1960, pursuant to the opinion of the Court filed on that date.

(ii) No petition for rehearing was filed and no order has been sought to extend the time for filing petition for writ of certiorari.

(iii) Jurisdiction to review the judgment of the Court of Appeals is conferred upon this Court by the Act of June 25, 1948, 62 Stat. 923, U. S. C. A., Title 28, Sec. 1254.

As pointed out previously, an action was brought for both indemnity and contribution. Both the District Court and the Court of Appeals for the Eighth Circuit held that

Northwestern was entitled to contribution from Rock Island, but not indemnity. If the case is to be reviewed on the question of whether or not Northwestern is entitled to contribution, the whole case should be reviewed and the Court should determine whether or not Northwestern is entitled to indemnity.

QUESTION PRESENTED FOR REVIEW.

Under the facts, as found by both Courts below, the Rock Island set out a defective car for interchange. The Northwestern had no contact with the car whatsoever prior to the activities of the injured man.

QUESTION NO. 1. When Northwestern is guilty of no actual negligence whatsoever, is it entitled to indemnity rather than contribution?

THE STATUTES INVOLVED.

No statute is involved in this phase of the case, as it is governed by the Iowa common law.

STATEMENT OF THE CASE.

The statement of the case found at page 9 of Chicago and Rock Island's petition for certiorari hereinbefore filed is regarded as a satisfactory statement of the case, and is hereby adopted by Chicago and North Western, cross-petitioner.

BASIS OF DISTRICT COURT JURISDICTION.

Chicago and North Western, cross-petitioner's complaint was predicated upon diversity of citizenship. Rock Island is a Delaware corporation and Northwestern a corporation of the state of Wisconsin.

ARGUMENT.

QUESTION 1.

Your cross-petitioner herein feels there is no particular necessity for this case to reach this Court whatsoever and will subsequently file a brief in opposition to said petition. However, if the Court is to review the case at all your cross-petitioner feels that the whole case should be reviewed. The legal questions raised herein are of no significance whatsoever, as it is purely a question of Iowa law, but in the interests of justice if the Court feels there is anything to decide on Rock Island's petition for certiorari then it should have the whole case before it to correct all errors made below.

There are certain Iowa cases announcing the Iowa doctrine of contribution, such as **Best v. Yerkes**, 247 Iowa 800, 77 N. W. 2d 23; **Van Tiger v. Hendricks**, 249 Iowa 25, 85 N. W. 2d 543, 545; **Constantine v. Scheidel**, 249 Iowa 953, 90 N. W. 2d 10, and **Hawkeye-Security Ins. Co. v. Lowe Construction Co.**, ... Iowa ..., 99 N. W. 2d 421, 425.

Cases dealing with the Iowa doctrine of indemnity include **Hathaway v. Sioux City** (1953), 244 Iowa 508, 57 N. W. 2d 228; **Weidert v. Monahan Post Legionnaire Club Inc.** (1952), 243 Iowa 643, 51 N. W. 2d 400; **Rozmajzl v. Northland Greyhound Lines** (1951), 242 Iowa 1135, 49 N. W. 2d 501; **Hawley v. Davenport, R. I. & N. W. Ry. Co.** (1951), 242 Iowa 17, 45 N. W. 2d 513; **City of Des Moines v. Barnes** (1947), 238 Iowa 1192, 30 N. W. 2d 170; **Horrabin v. City of Des Moines** (1924), 198 Iowa 549, 199 N. W. 988, 38 A. L. R. 554; **Sweet v. Atkinson** (1921), 191 Iowa 645, 182 N. W. 793; **City of Des Moines v. Des Moines Water Company** (1920), 188 Iowa 24, 175 N. W. 821; **Pfaff v. Standard Oil Co.** (1914), 165 Iowa 657, 146 N. W. 851, L. R. A. 1915C, 336; **Chicago & Northwestern Ry. Co.**

v. Dunn (1882), 59 Iowa 619, 13 N. W. 722; and **City of Ottumwa v. Parks** (1876), 43 Iowa 119.

If the Court takes this case at all it should review it in whole and determine which of these lines of cases appropriately apply under the facts of the case.

CONCLUSION.

As your cross-petitioner will argue subsequently in its brief in opposition, it feels little can be gained by a review of this case as largely fact questions are presented. However, if this Court reviews this case at all it should review the case in its entirety.

Respectfully submitted,

CARL McGOWAN,
400 West Madison Street,
Chicago 6, Illinois.

FRANK W. DAVIS,

RAY H. JOHNSON, JR.,
1115 Bankers Trust Building,
Des Moines 9, Iowa,
Attorneys for Respondent,
Cross-Petitioner.